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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUITIN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 09-90060

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se prisoner who is an attorney, alleges that the district judge assigned to his habeas case made various improper substantive and procedural rulings. These charges relate directly to the merits of the judge's rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not the proper vehicle for challenging the merits of a judge's rulings. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge unduly delayed ruling on one of his motions and scheduling an evidentiary hearing. But delay is not cognizable "unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases." Judicial-Conduct Rule 3(h)(3)(B); In re Complaint of Judicial Misconduct, 567 F.3d 429, 431 (9th Cir. Jud. Council 2009).

Neither of these is present here. Indeed, the docket reveals that the judge ruled on complainant's motion within two months of its receipt and scheduled the hearing within two months of complainant's request. Therefore, these charges must be

dismissed.

Complainant further alleges that the judge failed to rule on his summary judgment motion. But the docket reveals that the judge ruled on the motion without extraordinary delay. This claim must be dismissed because the charged behavior does not amount to “conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

Complainant’s request that the judge be ordered to rule on his pending motions is not cognizable under the misconduct complaint procedure. See Judicial-Conduct Rule 3(h); In re Complaint of Judicial Misconduct, 567 F.3d at 431.

Complainant filed a prior complaint against the subject judge which was dismissed because complainant’s allegations were unfounded. Complainant, particularly as an attorney, was cautioned against filing future frivolous misconduct complaints. Complainant is therefore ordered to show cause why he should not be sanctioned by an order requiring him to obtain leave before filing any further misconduct complaints. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009). Complainant has thirty-five days from the filing of this order to file a response, which will be transmitted to the Judicial Council for its consideration.

DISMISSED and COMPLAINANT ORDERED TO SHOW CAUSE.